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davidsantosple

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FILED
DISTRICT COURT OF GUAM

APR 30 2007

MARY L.M. MORAN
CLERK OF COURT

FILED

DISTRICT COURT OF GUAM

APR 23 2007 *mb*

MARY L.M. MORAN
CLERK OF COURT

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID C.P. SANTOS,

Defendant.

CRIMINAL CASE NO. 07-00009

AMENDED
PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B), the United States and the defendant, DAVID C.P. SANTOS, enter into the following plea agreement:

1. The defendant agrees to enter a guilty plea to an Indictment charging him with Conspiracy to Commit Marriage Fraud, in violation of Title 18, United States Code, Section 371.

2(a) The defendant, DAVID C.P. SANTOS, further agrees to fully and truthfully cooperate with Federal law enforcement agents concerning their investigation of marriage fraud and related unlawful activities. Cooperation shall include providing all information known to defendant regarding any criminal activity, including but not limited to the offense to which he is pleading guilty. Cooperation will also include complying with all reasonable instructions from the United States; submitting to interviews by investigators and attorneys at such reasonable

1 times and places to be determined by counsel for the United States; producing to the United
2 States all non-privileged documents (including claimed personal documents) and other materials
3 in the possession, custody or control of defendant requested by attorneys and agents of the United
4 States; and testifying fully and truthfully before any grand juries, hearings, trials or any other
5 proceedings where defendant's testimony is deemed by the United States to be relevant.

6 Defendant understands that such cooperation shall be provided to any state, territorial, local or
7 federal law enforcement agencies designated by counsel for the United States. Further, it is
8 understood and agreed that defendant shall not directly, indirectly, or intentionally disclose
9 anything defendant knows or had done concerning the United States' investigation to anyone
10 other than defendant's attorney. Defendant agrees to take no steps directly or indirectly to warn
11 any subject of this investigation that defendant, a subject or anyone else is being investigated.

12 2(b) The United States will make this cooperation known to the Court prior to the
13 defendant's sentencing. The defendant further understands that he remains liable and subject to
14 prosecution for any criminal schemes of which he does not fully advise the United States, or for
15 any material omissions in this regard.

16 2(c) This agreement is not contingent in any way upon the outcome of any investigation,
17 proceeding or subsequent trial. Thus, none of the rights and obligations described above are in
18 any way dependent upon a grand jury returning an indictment, a jury's verdict at any trial, or the
19 success of any prosecution.

20 2(d) Except as otherwise herein provided, and in particular in Paragraph 8 of this plea
21 agreement, the United States agrees not to prosecute defendant for any other non-violent
22 offenses which were committed in the District of Guam or the Northern Mariana Islands (CNMI)
23 which defendant reveals to Federal authorities during his cooperation with the United States.
24 This agreement is limited to crimes committed by defendant in the districts of Guam or the
25 CNMI.

26 3. The defendant, DAVID C.P. SANTOS, understands that the maximum sentence for
27 conspiracy is a term of five (5) years imprisonment, a \$250,000 fine, and a \$100 special
28

1 assessment fee, which must be paid at the time of sentencing. Any sentence imposed may
2 include a term of supervised release of not more than three (3) years in addition to such terms of
3 imprisonment. Defendant understands that if he violates a condition of supervised release at any
4 time prior to the expiration of such term, the court may revoke the term of supervised release and
5 sentence him up to an additional two (2) years of incarceration pursuant to 18 U.S.C. §
6 3583(e)(3).
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8 3(b) If defendant cooperates as set forth in Paragraph 2, the government will recommend
9 that defendant receive the minimum term of incarceration recommended by the Sentencing
10 Guidelines.

11 3(c) The government will recommend a fine within the Sentencing Guidelines range. If
12 defendant is financially unable to immediately pay the fine in full, defendant agrees to make a
13 full disclosure of his financial status to the United States Attorney's Office by completing a
14 Financial Disclosure Form (OBD-500) for purpose of fixing a monthly payment schedule.
15 Defendant understands that, by law, interest accrues on any remaining balance of the debt.

16 4. The defendant understands that to establish a violation of Criminal Conspiracy to
17 Commit Marriage Fraud as charged pursuant to 18 U.S.C. § 371, the government must prove
18 each of the following elements beyond a reasonable doubt:

19 First: between September 8 and November 9, 2006, there was an
20 agreement between two or more persons to commit the crime of
21 marriage fraud;

22 Second: the defendant became a member of the conspiracy knowing
23 of at least one of its objects and intending to help accomplish it; and

24 Third: ~~the~~ ^{one} of the members of the conspiracy performed at least one
25 overt act for the purpose of carrying out the conspiracy, with the jury
26 agreeing on the particular overt act which was committed.

27 5. The defendant agrees that the Sentencing Guidelines apply to this offense. The
28 defendant also understands that the facts he stipulates to herein will be used, pursuant to 1B1.2,
in calculating the applicable guidelines level. The Government and the defendant stipulate to the
following facts for purposes of the Sentencing Guidelines:

1 (a) The defendant was born in 1950, and is a citizen of the United States.

2
3 (b) If the defendant cooperates with the United States by providing information
4 concerning the unlawful activities of others, the government agrees that any self-incriminating
5 information so provided will not be used against defendant in assessing his punishment, and
6 therefore, pursuant to § 1B1.3 of the Sentencing Guidelines, this information should not be used
7 in determining the applicable guidelines range.

8 (c) Hyo Jin Pack, a citizen of Korea, had overstayed her Korean tourist visa. She asked
9 Kwang Ho Park if he could find an American citizen whom she could marry so that she could
10 remain in the United States. Park introduced Pack to Rex Garrido, who agreed to marry her for
11 \$15,000. Kwang Ho Park approached defendant and told him that his girlfriend had overstayed
12 and was looking for a U.S. citizen to marry. Defendant agreed to assist Pack do the necessary
13 paperwork in support of the fraudulent marriage. In addition to processing the paperwork for a
14 marriage license, defendant offered advice to Park, and Hyo Pack do about what they would have
15 to do to make the marriage appear legitimate to federal immigration authorities. He agreed to
16 perform this work for \$900, and accepted a \$500 payment on October 25, 2006. On October
17 27, 2006, after filling out the marriage application, defendant accompanied Pack, Park and
18 Garrido to the Guam Department of Revenue and Taxation to ensure that the marriage license
19 would be issued.

20 (d) The defendant understands that notwithstanding any agreement of the parties, the
21 United States Probation Office will make an independent application of the Sentencing
22 Guidelines. The defendant acknowledges that should there be discrepancies in the final
23 sentencing guidelines range projected by his counsel or any other person, such discrepancies are
24 not a basis to withdraw his guilty plea.

25 6. The defendant understands that this plea agreement depends on the fullness and
26 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
27 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
28 material omissions or intentional misstatements or engage in criminal conduct after the entry of

1 his plea agreement and before sentencing, the government will be free from its obligations under
2 the plea agreement. Thus defendant, in addition to standing guilty of the matters to which he has
3 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
4 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
5 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
6 any and all information, in whatever form, that he has provided pursuant to this plea agreement
7 or otherwise; defendant shall not assert any claim under the United States Constitution, any
8 statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of
9 Evidence, or any other provision of law, to attempt to bar such use of the information.
10

11 7. Defendant understands that whether he has completely fulfilled all of the obligations
12 under this agreement shall be determined by the court in an appropriate proceeding at which any
13 disclosures and documents provided by defendant shall be admissible and at which the United
14 States shall be required to establish any breach by a preponderance of the evidence.

15 8. In exchange for the Government's concessions in this plea agreement, the defendant
16 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
17 the sentence imposed in this case. He agrees to waive all constitutional challenges to the validity
18 of the Sentencing Guidelines. The defendant agrees that the government has bargained for a
19 criminal conviction arising from his conduct. If at any time defendant's guilty plea or conviction
20 is rejected, withdrawn, vacated or reversed, for whatever reason, or if any change of law renders
21 the conduct for which he was convicted to be non-criminal, defendant agrees that he will enter a
22 guilty plea to another charge encompassing the same or similar conduct. In such event,
23 defendant waives any objections, motions or defenses based upon the Statute of Limitations,
24 Speedy Trial Act, or constitutional restrictions as to the time of bringing such charges.

25 9. The defendant acknowledges that he has been advised of his rights as set forth below
26 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
27 had sufficient opportunity to reflect upon, and understands the following:

28 (a) The nature and elements of the charge and the mandatory minimum penalty provided

1 by law, if any, and the maximum possible penalty provided by law;

2 (b) His right to be represented by an attorney;

3 (c) His right to plead not guilty and the right to be tried by a jury and at that trial, the
4 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
5 and the right not to be compelled to incriminate himself, that is, the right not to testify;

6 (d) That if he pleads guilty, there will not be a further trial of any kind on the charges to
7 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
8 up, the right to a trial;

9 (e) Because this plea is entered pursuant to Federal Rule of Criminal Procedure
10 11(c)(1)(B), the defendant understands that he may not withdraw his guilty plea even if the court
11 does not accept the sentencing recommendations of the government or his counsel;

12 (f) That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
13 about the offenses to which he has pled, under oath, and that if he answers these questions under
14 oath, on the record, his answers may later be used against him in prosecution for perjury or false
15 statement if an answer is untrue;

16 (g) That he agrees that the plea agreement is voluntary and not a result of any force,
17 threats or promises apart from this plea agreement;

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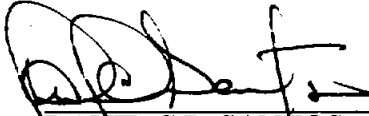
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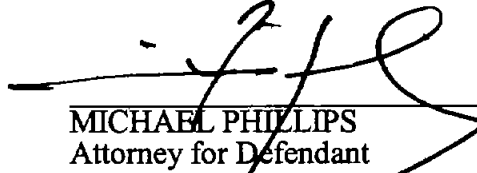
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1 (h) The defendant is satisfied with the representation of his lawyer and feels that his
2 lawyer has done everything possible for his defense.
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5 DATED: 4/19/07
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DAVID C.P. SANTOS
Defendant


7
8 DATED: 4/19/07
9


MICHAEL PHILLIPS
Attorney for Defendant

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11 LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and NMI
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13 DATED: 4/20/07
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By:


KARON V. JOHNSON
Assistant U.S. Attorney

15
16 DATED: 4/23/07
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JEFFREY J. STRAND
First Assistant U.S. Attorney
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